

**REMARKS**

Claims 1-10 are pending and are rejected in the application. Claims 1, 2, 6 and 10 are amended. It is submitted that new matter is not introduced through the claim amendments. Further, upon belief, this response is fully responsive to the outstanding Office Action.

**Claim Rejections - 35 U.S.C. §103**

**Claims 1, 2, 9 and 10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Sadahiro et al. (USP 6,467,337 B2) and Katayama (USP 4,696,277).**

Claim 1 is amended to recite, “A fuel management system for a working machine (1), comprising: said working machine includes: tank contents amount measurement means (11B) ... based on a measurement value from said operational value measurement means (11A); a server includes: amount comparison means (55) ....” It is respectfully submitted that the cited art fails to describe or teach at least the aforementioned recitations of claim 1 of the present application.

Support for the aforementioned amendment to claim 1 may be found in at least FIGS. 2 and 3 of the present application. More specifically, the illustration of FIG. 2 describes a working machine 1 that includes a liquid surface sensor 11B, fuel tank 81, and service meter 11A; while the illustration of FIG. 3 describes a server 10 that includes a remaining fuel volume calculation 54, a volume comparison 55, and an alarm issue 58.

The primary reference (Sadahiro) relates to a device for calculating cruising range and method therefore which describes the method for calculating the cruising range of the present invention being adapted to acquire a fuel injection amount through a maintenance

communication line from an engine computer which controls the engine. (Sadahiro; Title, and column 4, line 30-34).

The Office Action at page 2 contends in items 3B and 3C that the operation value measurement means and the remaining fuel amount calculation means of claim 1 of the present application are described by Sadahiro at column 5, line 10 and column 5, lines 53-57, respectively.

In furthering the aforementioned contention, Applicant's believe that the Examiner intended to correlate the injection amount measurement means of the engine computer 16 and the calculation section 17 of Sadahrio with the operational value measurement means and the remaining fuel amount calculation means of claim 1, respectively.

In view of the foregoing, it is apparent that Sadahrio describes a single localized vehicular system. Furthermore, Applicants are unable to find a description of a server within the cited reference. An absence of such a teaching is not surprising as the device of Sadahiro is for calculating a cruising range and is adapted to acquire a fuel injection amount through a maintenance communication line from a fuel measurement means. Accordingly, a localized engine computer within the vehicle is employed to further such an arrangement.

Accordingly, it is respectfully submitted that Sadahiro fails to teach or suggest either explicitly or implicitly at least the aforementioned recitation of claim 1 of the present application. Nothing was found in the secondary reference (Katayama) which remedies the aforementioned deficiency of Sadahiro.

Although the above arguments are directed toward independent claim 1, it is submitted that the above arguments are applicable where appropriate toward the other claims (e.g., claims 2, 9 and 10 which depend from independent claim 1).

Furthermore, the Office Action at item 7 of page 3 contends that “since the applicant has submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a), because the calculation of a refuelling amount, when the remaining fuel amount is already known, is no more than the mere application of a known technique (subtraction of the remaining fuel amount from the maximum fuel amount) to a piece of prior art ready for improvement.” Applicants respectfully traverse the aforementioned contention furthered by the Office Action, and request that the Examiner provide proof for their contention.

To more particularly describe the refueling amount determination means, Applicants have amended claim 2 to recite, “the fuel management system according to Claim 1, further comprising refueling amount determination means (53, 59) included in the server....” Applicants are unable to find a description of a server within the cited art. If the Examiner is to maintain the present rejection, Applicants respectfully request that the Examiner provide support for his rejection.

In view of the foregoing, it is respectfully requested that the rejection is overcome.

**Claims 3-5 were rejected under 35 U.S.C. §103(a) as being unpatentable over Sadahiro and Katayama, as applied to claim 1 above, and further in view of Reimer (USP 6,484,088 B1).**

Claims 3-5 depend either directly or indirectly from claim 1. The aforementioned arguments presented over Sadahiro and Katayama regarding claim 1 are applicable here where appropriate. Furthermore, Applicants are unable to find a teaching within Reimer which remedies the aforementioned deficiencies of Sadahiro and Katayama. Additionally, claims 3-5 which depend either directly or indirectly from independent claim 1, are patentable for at least the reason of their dependency therefrom.

In item 12 on page 4 of the Office Action, the Examiner contends that, "Using the engine operational value of fuel consumed per time or distance measure, in conjunction with the operating hours of the engine or distance traveled in order to get a remaining fuel amount, hours until all fuel is consumed, or remaining distance amount, is a well-known application in various trip computers and fuel management systems."

In making the aforementioned contention, it appears as if the Examiner is taking Official Notice of the recitations of claim 3. Applicants respectfully traverse the Examiner's statement and request that the Examiner produce authority for the statement, and specifically point out the following errors in the Examiner's action.

First, the Examiner uses common knowledge as the principal evidence for the rejection. As explained in M.P.E.P. § 2144.03(E):

any facts so noticed should . . . serve only to 'fill in the gaps' in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground of rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.

Second, the noticed fact is not considered to be common knowledge or well-known in the art. In this case, the recitation is not of notorious character or capable of instant and unquestionable demonstration as being well-known. Instead, this recitation is unique to the present invention. *See* M.P.E.P. § 2144.03(A) ("the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute").

Third, there is no evidence supporting the Examiner's assertion. *See* M.P.E.P. § 2144.03(B) ("there must be some form of evidence in the record to support an assertion of common knowledge").

Fourth, it appears that the Examiner also bases the rejection, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such an assertion with an affidavit when called for by the Applicant. Thus, Applicant calls upon the Examiner to support such assertion with an affidavit.

In view of the foregoing, it is respectfully submitted that the rejection is overcome.

**Claims 6-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Sadahiro and Katayama, as applied to claim 1 above, and further in view of Tatsuya (JP Publ. 2003-254173).**

Claims 6-8 depend either directly or indirectly from claim 1. The aforementioned arguments presented over Sadahiro and Katayama regarding claim 1 are applicable here where appropriate. Furthermore, Applicants are unable to find a teaching within Tatsuya which remedies the aforementioned deficiencies of Sadahiro and Katayama.

In the Office Action at item 19 of page 6, the Examiner contends that the recitations of claim 6 are no more than the mere application of a known technique (multiplication of volume by a specific gravity value) to a piece of prior art ready for improvement. It appears as if the Examiner is taking Official Notice of claim 6. Applicants respectfully traverse the Examiner's contention and submit that the Examiner has failed to appreciate the full recitations of claim 6. The Examiner is respectfully requested to submit proof if the Examiner is indeed taking Official Notice of said claim.

To more particularly describe the features of claim 6, Applicants have amended claim 6 to recite, "remaining fuel weight calculation means (56) included in the server for calculating an expected remaining fuel weight....." Applicants are unable to find a description of a server within the cited art. If the Examiner is to maintain his rejection, we respectfully request that the Examiner provide support for his rejection.

The Examiner similarly contends in item 23 of page 7 of the Office Action that "the calculation of a remaining fuel weight, when the remaining fuel volume is already known, is no more than the mere application of a known technique (multiplication of volume by a specific value) to a piece of prior art ready for improvement." Once again, it appears as if the Examiner is taking Official Notice of claim 7. The Examiner's contention is traversed, and the Examiner is respectfully requested to submit proof if the Examiner is indeed taking Official Notice of said claim.

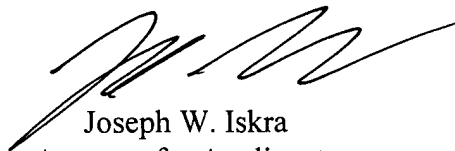
In view of the foregoing, it is respectfully submitted that the rejection is overcome.

In view of the aforementioned amendments and accompanying remarks, Applicants submit that the claims, as herein amended, are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,  
**WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP**



Joseph W. Iskra  
Attorney for Applicants  
Registration No. 57,485  
Telephone: (202) 822-1100  
Facsimile: (202) 822-1111

TEB/JWI/klf